

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 02-30336-WRS

Chapter 7

COOSADA TRUCKING
COMPANY INC.,

Debtor

MEMORANDUM DECISION

This Chapter 7 bankruptcy case is before the Court on what is styled a “Motion for Emergency Hearing.” (Doc. 351). The motion is filed by the lawyers who represented the estate in a civil action in District Court in a suit against one of Coosada’s lenders who miscalculated a loan payoff. A jury returned a verdict for Coosada, awarding actual damages in the amount of \$4,400 and punitive damages in the amount of \$1.3 million. The District Judge reduced the award of punitive damages to \$17,000, and the estate appealed to the United States Court of Appeals for the Eleventh Circuit, which affirmed the District Judge. On August 11, 2005, the Eleventh Circuit denied petitions for rehearing and rehearing En Banc. The lawyers now seek to hire “National Legal Scholars Law Firm,” to file a petition for certiorari with the United States Supreme Court. National Legal Scholars will file a certiorari petition for \$7,500. Moreover, their contract provides a schedule of charges depending upon the course of the proceedings.

As a threshold matter, the motion does not comply with Bankruptcy Rule 2014. The motion was not made by the Trustee¹ and it does not state whether there are any connections between National Legal Scholars and any of the parties to the litigation. In addition, the application is not supported with an affidavit. Rule 2014, Fed. R. Bankr. P. As the Court is

¹ The Trustee participated in a telephonic hearing on the motion and did not object to the motion.

opposed to the proposed employment on its merits, it will not require the lawyers and the Trustee to refile an appropriate motion.

On its face, an award of \$1.3 million in punitive damages in a miscalculation of a loan payoff appears to be grossly excessive in light of the fact that compensatory damages were only \$4,400. The Eleventh Circuit reviewed the District Court's reduction in the jury award. Coosada Trucking Company, Inc., v. CIT Financial USA Inc., 132 Fed. Appx. 816 (2005). Under the best of circumstances, a certiorari petition before the United States Supreme Court is a longshot. Under the circumstances here, it appears that hiring more lawyers to file a certiorari petition would be an unwise expenditure of the estate's limited funds.

Done this 25th day of August, 2005.

/s/ William R. Sawyer
United States Bankruptcy Judge

c: Susan Shirock DePaola, Trustee
Frank H. Hawthorne Jr., Attorney for Trustee